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Utilities and Transportation Division

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January 25, 1999

Ms. Carole J. Washburn  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

Re: Hanson Processing, L.L.C. v. Cascade Natural Gas Corporation  
Docket No. UT-980860

Dear Ms. Washburn:

Enclosed for filing are the original and 13 copies of Commission Staff's Response to Cascade's Motion for Summary Disposition, with attached Exhibits A and B, and Certificate of Service in the above-referenced matter.

Very truly yours,

SALLY G. JOHNSTON  
Assistant Attorney General

SGJ:kl  
cc: All parties

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

HANSON PROCESSING, L.L.C.,

Complainant,

v.

CASCADE NATURAL GAS  
CORPORATION,

Respondent.

DOCKET NO. UG-980860

COMMISSION STAFF'S RESPONSE  
TO CASCADE'S MOTION FOR  
SUMMARY DISPOSITION

**I. INTRODUCTION**

This is a private complaint case filed by Hanson Processing, L.L.C. (Hanson) against Cascade Natural Gas Corporation (Cascade). In its complaint, Hanson alleges in part that its contract to purchase natural gas from Cascade is void and unenforceable, unlawfully discriminatory, unjust, unfair, and unreasonable. Hanson further alleges that Cascade wrongfully and unlawfully refused to renegotiate the terms of its contract with Hanson and that the contract term providing for mandatory arbitration to settle disputes renders the contract void as against public policy.

The issues raised in Hanson's complaint were fully joined and adjudicated before JAMS/Endispute Arbitrator Robert Winsor in August, 1998. In an effort to undo the Arbitrator's

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RESPONSE TO MOTION  
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award of \$289,635.03 to Cascade, Hanson further alleges that the merits of its complaint should be heard and decided by the Commission despite the fact that the merits of its complaint already have been fully and fairly litigated in the arbitration proceeding.

Because all of the elements of waiver, res judicata, and collateral estoppel are present in this case, Commission Staff urges the Commission to grant Cascade's motion for summary disposition. At the same time, the Commission should confine its order to the facts of this case, ruling that absent Hanson's express waiver of its right to be heard before the Commission, the Commission would assert and exercise its jurisdiction over the merits of Hanson's complaint. On the facts of this case, a validation of the Arbitrator's ruling will not work an injustice against Hanson.

Finally, as a matter of public policy, the Commission should direct Cascade to incorporate into its tariffs any contract provisions mandating binding arbitration for the settlement of disputes arising out of its contracts with its customers. In the alternative, the Commission should stay any action on Hanson's complaint pending resolution of Hanson's appeal of the King County Superior Court judgment to the Court of Appeals, Division I.

## **II. FACTUAL SUMMARY AND PROCEDURAL HISTORY**

On May 12, 1995, Cascade and Hanson entered into an agreement for the purchase and sale of natural gas (contract). The contract obligated Hanson to purchase a minimum amount of gas service from Cascade for a period of three years. By its express terms, the contract provided that any and all disputes arising out of the contract would be submitted to binding arbitration. See Exhibit A to Cascade's Motion for Summary Disposition. In addition, on May 24, 1995,

Hanson signed a Right of Way Contract (easement) granting Cascade a permanent non-exclusive easement on its property for the purposes of constructing a natural gas pipeline.

Hanson did not satisfy its obligation under the contract to purchase a minimum amount of gas service from Cascade. Nor did Hanson pay the amounts it owed Cascade for that gas service. As a result, in October 1997, Cascade demanded arbitration. By way of response, Hanson filed a lawsuit in Grant County Superior Court claiming that it should not be bound by either the terms of the contract or the easement. At the same time, Hanson sought an order staying the arbitration proceeding.

On January 26, 1998, Grant County Superior Court Judge E. Sperline denied Hanson's motion to stay the arbitration. On March 10, 1998, Cascade and Hanson, through their counsel, stipulated in writing to binding arbitration and to dismissal of Hanson's Grant County lawsuit.

In early 1998, Hanson informally complained to the Commission about its contract with Cascade. The Commission's Consumer Affairs Staff forwarded to Hanson a copy of the rules of procedure for the filing of a formal complaint. In its motion, Cascade incorrectly states that "Commission Staff apparently chose not to pursue Hanson's claims and determined in April 1998, 'to close' the inquiry." Cascade's Motion for Summary Disposition, at 3.

On June 11, 1998, Hanson advised the Arbitrator that it was withdrawing from arbitration and filing a complaint with the Commission under RCW 80.04.110.

On June 15, 1998, Hanson formally filed with the Commission its Complaint for Adjudicative Proceeding and Declaratory Relief.

On June 26, 1998, the Arbitrator rejected Hanson's attempt to withdraw from the arbitration.

In early July 1998, Hanson moved for a stay of the arbitration pending resolution of Hanson's complaint before the Commission. On July 17, 1998, that motion was denied by the Arbitrator.

In late July 1998, Hanson filed a motion in Grant County Superior Court seeking to vacate the March 1998, Stipulation for and Order of Dismissal. As a part of that filing, Hanson included the Declaration of Patsy J. Dutton, Assistant Director of Operations of the Commission, a true and correct copy of which is attached as Exhibit A. On August 6, 1998, Grant County Superior Court Judge E. Sperline denied Hanson's motion.

Subsequently, Hanson filed an emergency motion with the Court of Appeals, Division III, seeking a stay of the arbitration pending appeal of Judge Sperline's denial of Hanson's motion to vacate the Stipulation for and Order of Dismissal. On August 10, 1998, that emergency motion was denied.

On August 12, 1998, the arbitration went forward. Merton R. Lott, the Commission's Gas Industry Coordinator, was called to testify. A true and accurate copy of Mr. Lott's testimony is attached as Exhibit B.

On August 14, 1998, the Arbitrator entered a written decision "against Hanson Processing, LLC in the full deficiencies, \$215,740.00, together with pre-judgment and post-judgment interest, plus reasonable lawyer fees." See Exhibit R to Cascade's Motion for Summary Disposition.

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Thereafter, Hanson moved for reconsideration of that portion of the Arbitrator's ruling regarding the easement. On September 14, 1998, that motion was denied.

On September 29, 1998, the Order Confirming Arbitration Award, and Judgment Against Defendant in the amount of \$289,635.03 were entered in King County Superior Court.

On October 27, 1998, Hanson appealed the King County Superior Court Judgment to the Court of Appeals, Division I. That appeal has been assigned No. 43537-0 and is pending. No briefing schedule has been set.

On December 14, 1998, the Court of Appeals, Division III, dismissed Hanson's appeal of Judge Sperline's denial of Hanson's motion to vacate the Stipulation for and Order of Dismissal entered March 19, 1998.

### III. ARGUMENT

#### **A. The Commission Has Jurisdiction to Hear and Decide the Merits of Hanson's Complaint Against Cascade But Should Not Exercise That Jurisdiction in This Case.**

The question before the Commission is not one of jurisdiction. Clearly, the Commission has jurisdiction over the merits of Hanson's complaint under RCW 80.04.110, the complaint statute.<sup>1</sup> That statute permits the filing of private complaint cases before the Commission. In this case, however, the Commission should not exercise its jurisdiction over the merits of

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<sup>1</sup>The Commission, however, lacks jurisdiction over Hanson's dispute with Cascade concerning the Right of Way Contract, or easement. RCW 80.04.110 governs complaints alleging violations of "any provision of law or of any order or rule of the commission. . . ." The Commission would have jurisdiction over the non-easement portions of the complaint because Hanson alleges that the contract itself, and Cascade's implementation of it, violate various provisions of state law.

Hanson's complaint for the simple reason that Hanson waived its right to be heard before the Commission.

**1. Hanson Expressly Waived Its Right to Proceed Before the Commission.**

On March 10, 1998, Hanson, through its counsel, expressly waived its right to proceed before the Commission. On that date, its counsel signed a Stipulation for and Order of Dismissal of its lawsuit in Grant County Superior Court. That Stipulation provides:

It is hereby stipulated and agreed by and between the parties in the above-captioned case, through their respective counsel, that all Plaintiff's claims or causes of action, whether asserted or not, are to be fully settled, compromised, or otherwise resolved through binding arbitration, and that this cause of action may be dismissed with prejudice and without costs to any party, upon the application of any party without notice.

See Stipulation for and Order of Dismissal entered March 19, 1998, Exhibit F to Cascade's Motion for Summary Disposition.

The Order of Dismissal provides:

This matter coming on for presentment upon the stipulation of the parties in the above-captioned case, through their respective counsel, and it appearing that all Plaintiff's claims or causes of action are to be fully settled, compromised, or otherwise resolved through binding arbitration, and that this cause of action should be dismissed with prejudice and without costs, it is therefore ordered, adjudged, and decreed that all Plaintiff's claims or causes of action are hereby dismissed with prejudice and without costs.

Id.

"Waiver" is defined as an intentional relinquishment of a known right, "but the existence of an intent to waive that right must clearly appear in order to show a waiver." Keyes v.

Bollinger, 31 Wn. App. 286, 293, 640 P.2d 1077 (1982). The party asserting the existence of a

waiver has the burden of proving it. Id. Waiver may be established by proof of an express agreement or implied from the circumstances. Id. In determining whether or not a waiver exists, a court will consider whether or not a party was represented by counsel:

If the right claimed to have been knowingly waived requires an appraisal of the legal significance of particular conduct or documents, the lack of counsel at the time of an alleged waiver . . . is a factor to be considered in determining if he [plaintiff] had knowledge of the right he allegedly waived.

Id. at 293-94 (citation omitted).

Here, Hanson was ably represented by counsel at the time it agreed to binding arbitration and voluntarily dismissed its lawsuit against Cascade. This fact demonstrates the existence of a valid waiver.

The Arbitrator likewise relied upon the doctrine of waiver in denying Hanson's requests to either stay or withdraw from the arbitration proceeding. Ruling in the alternative,<sup>2</sup> the Arbitrator found:

[A]s an alternative ground for my ruling, I find that Hanson agreed to proceed to this arbitration. The January 26, 1998, order from Judge Evan E. Sperline of Grant County Superior Court denying Hanson's motion for stay of arbitration confirmed that this arbitration should go forward. In the March 19, 1998, stipulation for and order of dismissal, signed by counsel and Judge Sperline, the parties agreed that 'all [Hanson's] claims or causes of action are to be fully

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<sup>2</sup>Commission Staff disagrees with the Arbitrator's initial reason for rejecting Hanson's request to withdraw from the arbitration. The Arbitrator stated that he "saw nothing in these statutes that gives the WUTC jurisdiction over this kind of dispute, a dispute over the respective rights and obligations of the parties to an agreement to provide natural gas service." Memorandum Opinion of Robert Winsor (June 26, 1998), attached as Exhibit J to Cascade's Motion for Summary Disposition. Clearly, the Commission would not be precluded from exercising its jurisdiction to hear and decide the merits of Hanson's complaint under RCW 80.04.110. See Tanner Elec. Coop. v. Puget Sound Power & Light Co., 128 Wn.2d 656, 682, 911 P.2d 1301 (1996).



settled, compromised, or otherwise resolved through binding arbitration.’  
Thereafter, the parties agreed upon me as the arbitrator, and upon August 11-14,  
1998, for the arbitration hearing itself.

Memorandum Opinion of Robert Winsor (June 26, 1998), attached as Exhibit J to Cascade’s  
Motion for Summary Disposition.

The Commission should find the existence of a valid waiver and dismiss Hanson’s  
complaint with prejudice.

**2. The Doctrines of Res Judicata and Collateral Estoppel Also Bar  
Hanson from Relitigating Its Claims and Issues before the  
Commission.**

The doctrine of res judicata bars parties from relitigating claims once they have been  
resolved. Davidson v. Kitsap Cy., 86 Wn. App. 673, 681, 937 P.2d 1309 (1997). Collateral  
estoppel bars parties from relitigating issues resolved in a prior action. Hilltop Terrace  
Homeowner’s Ass’n v. Island Cy., 126 Wn.2d 22, 31, 891 P.2d 29 (1995). While res judicata  
generally applies to relitigation of claims and collateral estoppel, or issue preclusion, applies to  
reassertion of issues, the underlying principle is the same: “[A]n original misadventure cannot be  
retrieved for a second chance.” Id. at n.4 (quoting 18 C. Wright, A. Miller, M. Kane, Federal  
Practice and Procedure § 4402, at 1 (Supp. 1994)).

Res judicata is intended to promote judicial economy and further the goal that “a  
controversy should be resolved once, not more than once.” Id. at 22 (quoting 4 K. Davis,  
Administrative Law Treatise § 21:9, at 78 (2d ed. 1983)). The doctrine of res judicata will bar a  
claim when there is a final resolution of the claim and “identity of (1) subject matter; (2) cause of  
action; (3) persons and parties; and (4) the quality of persons for or against whom the claim is

made.” Davidson, 86 Wn. App. at 681 (citing Hilltop Terrace, 126 Wn.2d at 22 (quoting Rains v. State, 100 Wn.2d 660, 663, 674 P.2d 165 (1983))).

Res judicata not only bars claims which were litigated but also those claims which were not litigated but should have been litigated in the prior action:

The general doctrine is that the plea of *res judicata* applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

\* \* \*

The matter in controversy here was included within the matter in controversy there. It either was, or else could have been, adjudicated in the former action. That judgment, therefore, became *res judicata* of the issues and matters here presented.

Shoeman v. New York Life, 106 Wn.2d 855, 859, 726 P.2d 1 (1986) (citations omitted); see

Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 WASH. L. REV. 805, 812 (1985).

Here, it cannot reasonably be disputed that all of the elements of res judicata are satisfied.

The Commission should dismiss Hanson’s complaint with prejudice.

Hanson also is collaterally estopped from relitigating issues before the Commission.

The doctrine of collateral estoppel differs from res judicata in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted.

Rains v. State, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) (quoting Seattle-First Nat’l Bank v.

Kawachi, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978)).

The well-known doctrine of collateral estoppel is “a means of preventing the endless relitigation of issues already actually litigated by the parties and decided by a competent tribunal.” Reninger v. Department of Corrections, 134 Wn.2d 437, 449, 951 P.2d 782 (1998). An arbitration proceeding is one form of a “prior adjudication.” Neff v. Allstate Ins. Co., 70 Wn. App. 796, 799, 855 P.2d 1223 (1993). As such, it may be the basis for collateral estoppel. Id.; Dunlap v. Wild, 22 Wn. App. 583, 586-87, 591 P.2d 834 (1979); Robinson v. Hamed, 62 Wn. App. 92, 96-97, 813 P.2d 171, review denied, 118 Wn.2d 1002 (1991).

Four elements are required for application of the doctrine of collateral estoppel:

(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

Id. (quoting Southcenter Joint Venture v. National Democratic Policy Comm., 113 Wn.2d 413, 418, 780 P.2d 1282 (1989) (quoting Shoemaker v. City of Bremerton, 109 Wn.2d 504, 507, 745 P.2d 858 (1987))). All four elements plainly are met here.

Application of the doctrine of collateral estoppel would not work an injustice to Hanson because Hanson had a full and fair opportunity to litigate the merits of its complaint against Cascade. Neff, 70 Wn. App. at 801 (“Washington courts focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue”); Dunlap, 22 Wn. App. at 591. Hanson’s complaint should be dismissed with prejudice.

**B. In the Alternative, the Commission Should Stay This Matter Pending Resolution of Hanson's Appeal of the King County Superior Court Judgment In Favor of Cascade.**

As stated above, Hanson has appealed the King County Superior Court judgment to Division I of the Court of Appeals. That appeal is pending. If the Commission holds that this matter is properly before the Commission and finds that the evidentiary record before it is incomplete or inadequate and that there remain genuine issues of material fact for determination, the Commission should stay any further action in this matter pending resolution of Hanson's appeal. This would afford the Court of Appeals an opportunity to pass judgment on the merits of Hanson's appeal.

**C. Publish Its Mandatory Arbitration Clauses in Its Tariffs.**

For obvious reasons of sound public policy, the Commission should order Cascade to incorporate into its tariffs any contract provisions mandating binding arbitration for the settlement of disputes arising out of its contracts with its customers. Cascade's customers should be fully apprised of their rights and obligations when they take gas service under Cascade's tariffs. Requiring Cascade to make its mandatory and binding arbitration clauses a part of its tariffs would go a long way toward eliminating future disputes between the utility and its customers regarding the proper means of dispute resolution.

**IV. CONCLUSION**

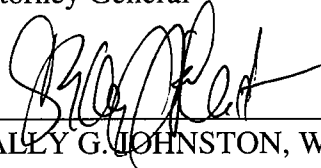
For the reasons stated above, Commission Staff requests that the Commission enter an order granting Cascade's motion for summary disposition and dismissing Hanson's complaint with prejudice. The Commission further should order Cascade to publish its mandatory

arbitration clauses in its tariffs. In the alternative, the Commission should stay this matter pending resolution of Hanson's appeal of the King County Superior Court judgment to the Court of Appeals, Division I.

DATED this 25th day of January, 1999.

Respectfully submitted,

CHRISTINE O. GREGOIRE  
Attorney General



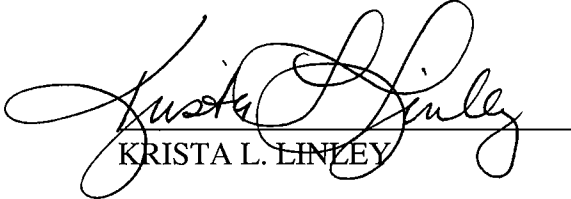
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SALLY G. JOHNSTON, WSBA No. 17094  
Assistant Attorney General  
Attorneys for Commission Staff

CERTIFICATE OF SERVICE  
UT-980860

I certify this day that I served a copy of the foregoing Commission Staff's Response to Cascade's Motion for Summary Disposition, with attached Exhibits A and B, and Certificate of Service, upon the parties listed below via facsimile and U.S. mail, postage prepaid:

DATED at Olympia, Washington this 25th day of January, 1999.

  
KRISTA L. LINLEY

Michael J. Riccelli  
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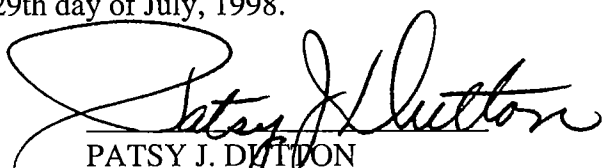
DECLARATION OF PATSY J. DUTTON

I, PATSY J. DUTTON, declare as follows:

1. I hold the position of Assistant Director of Operations with the Washington Utilities and Transportation Commission (Commission). I have been employed by the Commission for approximately twenty years.
2. On June 15, 1998, Complainant Hanson Processing, LLC (Hanson) filed with the Washington Utilities and Transportation Commission a complaint for adjudicative proceeding and declaratory relief against Cascade Natural Gas Corporation (Cascade), a regulated utility.
3. Hanson's private complaint case against Cascade has been assigned Docket No. UG-980860. The Commission will exercise its jurisdiction to hear and decide the matters raised in Hanson's complaint against Cascade, in whole or in part, in the future. It is expected that a Notice of Prehearing Conference will issue shortly in Docket No. UG-980860. A hearing schedule will be established at that time.

I declare under penalty of perjury that the foregoing is true and correct.

Signed at Olympia, Washington, this 29th day of July, 1998.

  
PATSY J. DUTTON

**EXHIBIT**     A

1 Is that agreeable?

2 MR. GOLTZ: That's fine.

3 THE ARBITRATOR: Ms. Reporter, will that  
4 accommodate your needs?

5 COURT REPORTER: Yes, thank you.

6 THE ARBITRATOR: Mr. Lott, raise your  
7 right hand, please.

8 MR. LOTT: Yes, I did.

9 \* \* \* \* \*

10 MERTON R. LOTT,  
11 having been first duly sworn  
12 upon oath, was examined and  
13 testified as follows:

14 \* \* \* \* \*

15

16 THE ARBITRATOR: Very well.

17

18 DIRECT EXAMINATION

19 BY MR. RICCELLI:

20 Q. Mr. Lott, this is Michael Riccelli. Will you please  
21 state your full name and give me a brief summary of  
22 your education.

23 A. Are we still there?

24 Q. Yes.

25 A. I think you asked me for my full name and education.



1 Q. Yes.

2 A. My name is Merton Robert Lott.

3 Education, I went to Seattle University. I  
4 graduated with a bachelor's degree in business  
5 administration with a major in accounting.

6 I've attended numerous -- after graduation I took  
7 sufficient courses to take the CPA exam, passed the  
8 CPA exam and have a certificate in the State of  
9 Washington.

10 I've taken numerous courses to maintain that  
11 certificate in accounting and other general matters --  
12 computers, etc., and regulation -- over the last 24  
13 years since I've worked with the Commission.

14 Q. And you've been employed by the Commission  
15 continuously for 24 years?

16 A. A little bit over 24 years, yes.

17 Q. What is your current position with the Commission?

18 A. I'm a Gas Industry Coordinator.

19 Q. And what does your position entail as far as job  
20 duties and responsibilities?

21 A. The way I look at it is I'm supervisor and coordinator  
22 of a group of five professionals; two accountants and  
23 three economists, along with the clerical staff for  
24 both the gas and electric sections -- the clerical  
25 staff is gas and electric.

1 But basically I coordinate the work and supervise  
2 the workload in all matters related to the gas  
3 industry except for, except for the safety of the gas  
4 pipeline, which is done by our engineering section  
5 which I do not supervise.

6 Q. In that regard, are you familiar with Schedule 511  
7 from the Cascade tariff?

8 A. I'm somewhat familiar with the Schedule 511, yes. I  
9 have it here in front of me, and I've reviewed it in  
10 discussions with you before.

11 Q. Now, is it true that that schedule, in its various  
12 forms, has been approved for utilization by Cascade?

13 A. Yes.

14 Q. Is that a tariff or a rate?

15 A. This is a tariff, which includes a rate -- rates.

16 Q. Would you describe the difference between what a  
17 tariff is, what a rate is, and why you state that that  
18 is a tariff which includes rates?

19 A. A tariff includes rules related to the provision of  
20 service of -- this is from an accounting standpoint.  
21 I mean, legal standpoint I am not sure, I'm not a  
22 lawyer.

23 But, generally, the tariff has rules that relate  
24 to the provision of service. And one of those rules  
25 is, I guess, is the rate or the rates that apply to

1 various services provided by the gas company.

2 But the tariff generally spells out all of the  
3 rules related to providing service, you know, under  
4 regulation, other than the special contract.

5 Q. And when you state "under regulation," is this  
6 specific tariff part of a filing that's made by the  
7 company, by Cascade Natural Gas Corporation?

8 A. This particular tariff schedule, 511, which I have,  
9 Schedule 511 is part of Cascade's tariff WNU-3, which  
10 is a substantial tariff, numerous pages.

11 MR. GOLTZ: This is Jeff Goltz. Mr. Lott  
12 has in front of him the Cascade Natural Gas  
13 tariff books.

14 A. The whole a copy, this is not the original. I have  
15 the copy out of our files of Cascade's current tariff,  
16 WNU-3. I also have the cancelled pages from tariff  
17 WNU-3 over a substantial period of time going back  
18 into the '60s.

19 BY MR. RICCELLI:

20 Q. So is it true that an individual tariff sheet or  
21 schedule can be replaced in part or in whole by a  
22 subsequent filing?

23 A. Yes.

24 Q. And you have a record of that?

25 A. I have the cancelled pages back, apparently, into the

1 '60s.

2 Q. Can you refer to the tariff that was in effect in May  
3 of 1995, the Schedule 511?

4 A. Schedule 511 in May of '95? It was one approved in  
5 February 6, 1994 and was cancelled on December 18,  
6 1995. That's the one I have in front of me right at  
7 the moment.

8 Q. Now, in approving -- I guess I should ask this. When  
9 a tariff is filed like that as part of a tariff book,  
10 does that mean or indicate that the Commission has  
11 approved its use for any purpose?

12 A. It's for use as described in the tariff. The company  
13 has to serve customers under any regulated service  
14 underneath its tariff, unless it's a special contract,  
15 which would also have to be approved by the Commission  
16 and signed.

17 Q. Are you aware of the fact that this tariff was made a  
18 part of a contract, Schedule 511 was made a part of a  
19 contract between Hanson Processing, LLC and Cascade?

20 A. I am aware that there is a contract signed. Did you  
21 use the word special contract?

22 Q. No.

23 A. No. I'm aware that there is a contract signed between  
24 Cascade and -- was it Hanson appealed to? Whatever  
25 the name of the company is.

1           And that is, by the way, one of the rules of the  
2           tariff page schedule that I'm looking at, that a  
3           contract has to be signed between Cascade and the  
4           industrial customer.

5       Q.   By having that tariff or that schedule filed with the  
6           Commission and having Cascade enter into an agreement  
7           utilizing that tariff, does that mean that the  
8           Commission has specifically approved the -- under the  
9           filing, the Hanson-Cascade contract or the tariff  
10          contain -- the use of the tariff in that specific  
11          application, to your knowledge or understanding?

12       A.   Again, I think you might be asking for something legal  
13           here, but the contract was signed, the contract would  
14           refer to the tariff schedule, and the tariff schedule  
15           has been approved by the Commission.

16                   Whether the contract was signed, you know, in a  
17           proper -- I'm not a lawyer, I don't know whether this  
18           contract was signed appropriately. I don't know what  
19           the requirements, specific, there is in signing a  
20           legal contract are with regards to whether it was  
21           legally -- I don't know what the term is -- but  
22           legally created.

23       Q.   But my question is: This is not like a special  
24           contract which is specifically approved by the  
25           Commission, is it?

1 A. No. The Commission does not go out and approve the  
2 individual service contracts that are signed  
3 underneath this tariff schedule.

4 Q. Is it the case on occasion that contracts between a  
5 utility and a customer which include tariffs are  
6 subject matters of dispute between them and eventually  
7 appear in some forum such as the Commission or such as  
8 this arbitration?

9 A. That is a possibility. I cannot remember many  
10 circumstances -- I'm trying to remember any, actually,  
11 where there was a dispute brought in front of the  
12 Commission on a gas tariff or an electric tariff  
13 related to service underneath the tariff schedule.

14 I'm sure there must have been, but I just can't  
15 remember them right offhand. But, yes, they could do  
16 that.

17 Q. Now, how does Rule 9, Main Extensions, relate to the  
18 Schedule 511 tariff?

19 A. Rule 9, which again, like is also part of the tariff.  
20 Unlike a schedule, it just outlines how that service  
21 will be provided to the customer and how charges will  
22 be made, if charges will be made to the customers who  
23 sign that.

24 Rule 9, one of the obligations -- I can look up  
25 the ex -- one of the requirements of the old Rule 9

1 and I think it's also a requirement of the new Rule 9,  
2 is that there's a revenue calculation.

3 In other words, when you do a line extension,  
4 there's a comparison between revenue and -- comparison  
5 between revenues and costs in the Rule 9 calculation.  
6 And the revenue calculation requires that there be  
7 some, I think, the word was "permanence" to the  
8 revenue and how that revenue would be calculated.

9 Q. Is it fair to state that Rule 9 -- is Rule 9 a  
10 statement that allows a gas utility to, quote, finance  
11 an installation over time, basically?

12 A. What Rule 9 does, one part of Rule 9 allows for an  
13 allowance, and that's what I was referring to before.  
14 In other words, when a customer comes on-line, there's  
15 certain costs associated with adding that customer.

16 The main itself and any portion of that system  
17 has to be constructed to bring the customer on-line.  
18 That costs would be surcharged or charged to the new  
19 customer, but an allowance is granted under certain  
20 circumstances.

21 And those circumstances have to do with the  
22 revenues that have some permanence under the  
23 definition, you know. And there's a term I'm looking  
24 for: Shall be permanent as to warrant expenditure  
25 required.

1 In other words, there has to be -- And that would  
2 be the connection between Rule 9 and the tariff 511.  
3 In other words, you would have rates in Schedule 511  
4 and one could calculate a level of revenue as long as  
5 there was permanence in those -- collection of those  
6 Schedule 511 rates. So it's that relationship.

7 Generally, it's my understanding from what I'm  
8 seen and other analysis done by Cascade that with  
9 large industrial customers, usually transport  
10 customers, that that analysis is done based on the  
11 term of the contract. They do not assume an  
12 industrial customer is there permanently. They assume  
13 that the industrial customer is there for the term of  
14 the original contract.

15 Therefore, that's the permanence that they use in  
16 determining whether the line extension, how much of an  
17 allowance to give that line extension customer.

18 So that's the basis that I've seen in other  
19 analysis of what Cascade terms to be permanence of the  
20 revenue. They take the schedule plus the term of the  
21 contract, of the original contract, and that's the  
22 basis for calculating this allowance in schedule -- or  
23 Rule No. 9.

24 MR. GOLTZ: This is Jeff Goltz. In  
25 answering that question, Mr. Lott referred



1                   briefly to the Rule 9. It was the version of  
2                   Rule 9 which was effective March 5, 1990, and  
3                   was cancelled November 27, 1997.

4 BY MR. RICCELLI:

5       Q.    Thank you. Is there any rule or requirement from the  
6            Commission that a gas utility utilize Rule 9 in  
7            conjunction with, say, Schedule 511 in providing  
8            service as opposed to just allowing or giving the  
9            customer the opportunity to pay for a gas line  
10           extension costs?

11       A.   Well, Rule 9 in fact does just set up that you're  
12           going to have to pay the cost unless they have this  
13           revenue offset. So a customer could choose service  
14           under a particular schedule that didn't require a  
15           contract.

16                   And could have been -- just pay the whole line  
17           extension and -- the whole cost of the line extension,  
18           and then take service underneath that schedule for  
19           whatever period of time they wanted to.

20       Q.   Based on your understanding and your experience with  
21           the Commission, is there some preference on the  
22           Commission's part, or understanding with the  
23           utilities, that they are to offer the lowest cost  
24           alternatives to the customer and let the customer  
25           decide what schedules or alternatives to choose?

1 A. Generally speaking, when a customer -- the general  
2 policy I would say would be more from an oral  
3 tradition.

4 I don't know of any specific order that I can  
5 recall, but I can recall situations where the  
6 Commission has indicated -- and it might be in an  
7 order -- where the Commission has indicated that it  
8 might be appropriate for the companies to advise the  
9 ratepayers that other schedules may be cheaper than  
10 the schedule they were currently on.

11 And in almost all of those circumstances, those  
12 were relating to customers that currently existed.

13 I would assume that the Commission, from those  
14 statements, would want a utility to treat a newcoming  
15 customer in the same fashion.

16 In other words, when a customer comes in and  
17 says, "This is the level of service I'm going to  
18 take," it would be -- I don't want to call it an  
19 obligation because that might imply some legal  
20 obligation -- but it would be an obligation in the  
21 accounting sense to tell the customer what the proper  
22 tariff schedule that would yield the lowest possible  
23 price would be underneath that circumstance.

24 But, again, that's just applying other decisions  
25 to that type of position. I think that would be

1 staff's position, by the way. If we thought that a  
2 company was asking -- was giving customers the wrong  
3 tariff schedules and collecting more than they should  
4 be collecting from those customers, we would probably  
5 push for some change in that position of the company  
6 and would probably go after the company in some  
7 fashion in front of the Commission.

8 So we would want the company to represent the  
9 best tariff to fit that particular customer.

10 Q. Are you familiar with the statutes of the State of  
11 Washington that charge the Commission with regulating  
12 utilities with the concept of justness, fairness, and  
13 reasonableness?

14 A. I think that's all under that public interest, yeah.

15 Q. And if you would assume that for whatever reason there  
16 was no clear communication of the lowest cost  
17 alternatives, that is, to pay in this case, the  
18 \$67,000 or 70,000 of pipeline extension costs; and  
19 that upon receiving the first bill for a deficiency,  
20 the owner here, HPLLC, requests renegotiation of the  
21 contract, would you assume under the concepts of  
22 justness, fairness, and reasonableness that the  
23 company is obligated to consider renegotiation of the  
24 contract?

25 A. That I couldn't -- I'm not a lawyer, and I couldn't

1 say the answer to that.

2 I just would have no opinion on that because you  
3 have a contract there that was based on the  
4 representation that I don't know what those  
5 representations are. And that were made to Cascade.

6 Now, there's the crux of what, to me, the problem  
7 is, because I don't know who made what representations  
8 to whom.

9 Q. Previously you just stated that in other cases, or you  
10 believe the Commission showed a preference for  
11 existing customers to be offered lower cost  
12 alternatives if that were suitable; is that correct?

13 A. I said that.

14 Q. In this case, if, after the first year of a tariff in  
15 place, it was discovered that the tariff was not the  
16 lowest cost alternative, wouldn't that situation fit  
17 into what you've previously testified to?

18 A. What my problem comes down in this case is because  
19 this specific tariff schedule requires a contract, has  
20 to do with the size of the customer.

21 So only the largest type customers are required,  
22 large industrial customers are usually required to  
23 sign contracts that applies not just to this firm's  
24 service schedule, but it also applies to  
25 transportation customers, large transportation

1 customers, and interruptible customers where contracts  
2 are required.

3 So in this case you have an agreement between a  
4 particular customer and the company as to the services  
5 they are going to take and under what tariff schedule  
6 they are going to take it.

7 Q. Right.

8 A. So that's why, after the end of the four years -- or  
9 whatever the term of the contract, I'm not even sure  
10 what that term is -- after the term of the contract,  
11 my answer would be there should be -- and I'm again  
12 not speaking as a lawyer, so if there's something  
13 wrong with the contract then that should be  
14 renegotiated to the right schedule.

15 But if it's at the end of the contract, then I  
16 definitely would think the Commission's viewpoint  
17 would be that the company should be signed up at the  
18 right tariff schedule that would provide the most  
19 appropriate charges at that time.

20 Q. Previously you testified that you thought that the  
21 concept of renegotiation or lowest cost alternative  
22 would be applied to new customers, and that there's  
23 some imputed obligation -- and correct me if I'm  
24 wrong -- there's some imputed obligation for a utility  
25 to offer low cost alternatives, or at least the

1 appropriate schedules, to a customer.

2 If that were not the case, are you stating that  
3 your assumption -- you have no assumption as to what  
4 happened here; if the assumption were that that was  
5 not the case, you might change your testimony in that  
6 regard?

7 A. I don't know in this case what happened in the  
8 negotiations, who represented what, who said what  
9 level of service. Again, I think Hanson was taking or  
10 was going to take the demand at a certain level of  
11 service.

12 As I say, I don't know what happened in the  
13 negotiations. What I have is a contract that says  
14 that somebody's going to use such and such a level,  
15 and the other side will provide that level of service,  
16 and that's all I have.

17 And as not a lawyer, I have no ability to  
18 change -- again, I don't know what happened in those  
19 negotiations or why, why that 260,000 therms or  
20 whatever it was, was requested. You have no basis to  
21 change any of that, that original request.

22 Q. In respect to the Schedule 511, would you slowly and  
23 carefully go through the elements of costs of the  
24 rate; WACOG, weighted average cost of gas, etc., and  
25 the concepts of capacity or demand costs, fixed cost.

1 Everything that comes to your mind that reflects  
2 upon costs that are either incurred or imputed to  
3 somebody or something under that schedule.

4 MR. GOLTZ: This is Jeff Goltz. Are you  
5 referring to the tariff schedule that was in  
6 effect in May of 1995?

7 MR. RICCELLI: Right.

8 MR. GOLTZ: He's referring to that.

9 A. That's the page I'm looking at. I'm also looking at  
10 the current tariff schedule, same pages. One is  
11 effective August 1, '98.

12 BY MR. RICCELLI:

13 Q. Is there any difference in the two?

14 A. There's a difference in the structure of the two. But  
15 the general costs that are included within the rates  
16 are virtually the same, although the level of costs  
17 included within the rates are different.

18 Let me go through what's included, and I'll --  
19 basically in both cases I don't have the dollar  
20 amounts.

21 THE ARBITRATOR: I'm going to interrupt  
22 you for a moment.

23 THE WITNESS: Okay.

24 THE ARBITRATOR: Gentlemen, I suggest that  
25 he testify from the earlier schedule. And if

1           there are differences after he's done that, if  
2           you want to elicit further questions about a  
3           later schedule, okay.

4                     Do you understand that.

5     A.    I heard you.  Again, I think my answer will be  
6           effective.  Okay, the rate at the time was, you know,  
7           it was broken down into two pieces, if I'm looking at  
8           the right schedule.  Okay.

9                     The first 4,000 therms a month and the 4,000  
10           therms above that level, and the difference in the  
11           rate was 53½, approximately, and 41.3 cents per therm  
12           for those over 4,000.

13                    Now, what's included in those costs, both the 53  
14           and the 41, is, number one, a commodity cost of gas.  
15           That is the cost for Cascade to purchase gas on the  
16           market.  That does not include the cost of moving the  
17           gas from where they purchased it to the city gate in  
18           Moses Lake, or wherever the customer may be.

19                    The second part is exactly that cost, the cost of  
20           moving it.  It is called -- the capacity cost is  
21           generally the term we use.  It's usually the cost paid  
22           to Northwest Pipeline; could also be paid to other  
23           people that owned the capacity on Northwest Pipeline,  
24           and it's the cost of moving it.

25                    In Cascade's case, the combination of these two



1 amounts is someplace in the 30-cent neighborhood.

2 The remainder of the costs of the rate is  
3 intended to cover all other costs that the company  
4 has. That includes the president's salary down to  
5 the, you know, the man or woman that purchases gas for  
6 the company. It includes the pipe that runs down the  
7 street, down all the streets.

8 These costs are allocated in general rate cases,  
9 and -- don't have those general rate cases in front of  
10 me, but it goes through and various parties argue  
11 about that, and then the Commission decides on what a  
12 proper rate is.

13 Those rates aren't directly to cover any  
14 particular costs, but are part of the total margin  
15 that the company needs to cover all the non-gas costs  
16 that the company incurs.

17 So there are three parts to the rate. It's  
18 commodity cost of gas, the capacity cost to move the  
19 gas from where it was purchased to where it was  
20 delivered, and onto Cascade system, delivered to  
21 Cascade system. And the remainder cost is what's  
22 referred to as the margin.

23 Again, those things are the same in today's  
24 tariff as they were in the 1994 tariff. The only  
25 difference is the level that's included in today's

1 tariffs are different levels than they were back in  
2 1994.

3 BY MR. RICCELLI:

4 Q. Assume if you will, that the testimony has established  
5 that Cascade can identify only the cost of  
6 installation of the gas pipeline within its accounting  
7 system as its only direct out-of-pocket expense,  
8 substantial direct out-of-pocket expense expended with  
9 respect to this contract; okay?

10 A. Okay.

11 Q. Is there anything in the schedule or the rate or the  
12 rules of the Commission that would require -- that  
13 would guarantee that Cascade's accounting of anything  
14 recovered in excess of that would go to any other pool  
15 of costs or fixed costs as opposed to profit?

16 A. Can you ask that question one more time.

17 (Last question read by the court  
18 reporter.)

19 A. Okay. Yes. The answer has to do with -- remember I  
20 told you that the rate was made up of three parts?  
21 The margin, the capacity, and the commodity portion of  
22 the rate.

23 To the extent that the rate was commodity or  
24 capacity oriented, if the company was collecting on a  
25 total company basis more than their current commodity

1 or capacity costs, then that money would be put into a  
2 holding account and refunded or surcharged -- if it  
3 was under it they would be surcharged; if they  
4 overcollected those two pieces, it would flow to the  
5 customers on -- there's a form whether it goes to  
6 industrial customers or residential or commercial  
7 customers -- but the gas costs would only be collected  
8 to the extent the company actually had incurred gas  
9 costs.

10 And when I say "gas costs," it would be both the  
11 commodity and the capacity, the ability to deliver the  
12 gas to the city gate.

13 BY MR. RICCELLI:

14 Q. If the testimony were established that they purchased  
15 no increased capacity as a result of this contract,  
16 and that they -- in their deficiency bill, they took  
17 out the cost of gas, the WACOG, okay, then what  
18 remains?

19 A. Okay. What they're supposed to take out, you said  
20 WACOG and I just want to define that term for the  
21 record so that I understand it. WACOG in this sense  
22 is only the weighted average commodity cost of gas.

23 And I took those terms right out of the tariff.  
24 And that was just one of the three pieces of the rate.

25 Remember, I said there was the capacity cost and

1 there was the margin costs. So what remains is the  
2 capacity cost and the commodity costs -- I mean the  
3 capacity and the margin.

4 And the margin costs would include the costs of  
5 that line extension. So a portion of the line  
6 extension would be included in the margin, the costs  
7 related to margin.

8 Did I answer your question, Mr. Riccelli?

9 Q. Not really, but it's probably the result of my  
10 question.

11 A. Try it again.

12 Q. We're talking about -- let's see if I can characterize  
13 the testimony. There has been testimony that  
14 approximately \$11,000 a year, based on a calculation  
15 done yesterday, could be assigned or may be assigned  
16 Hanson as a result of the reserve, or the purchase of  
17 reserve of gas to supply this contract on a yearly  
18 basis; okay?

19 That's an assignment or allocation to what they  
20 believe to be their pool of costs to guarantee  
21 service, in other words, to purchase gas in advance;  
22 okay?

23 And that \$67,000 to 70,000 was the out-of-pocket  
24 cost of Cascade in constructing the gas pipeline.

25 A. Mm-hmm.

1 Q. And they are saying that the Commission's rules  
2 require the remainder of that to be split between  
3 profit or margin -- margin, and approximately out of  
4 \$75,000, or \$70- to \$75,000 a year, \$11,000 goes to  
5 that purchase capacity -- not to capacity but to the  
6 purchase reserve -- \$40- to \$43,000 goes to a pool, an  
7 interest-bearing account, for fixed costs of all 511  
8 schedule ratepayers by rule, by Commission  
9 requirement. And the remainder goes to profit or  
10 margin.

11 Does that sound consistent with your  
12 understanding of how this would operate?

13 A. The numbers --

14 MR. SALTER: Object to the --

15 THE ARBITRATOR: Hold it just a moment,  
16 please. Mr. Salter?

17 MR. SALTER: Just for purposes of the  
18 record, I am objecting to the form of the  
19 question, because I think it substantially  
20 mischaracterizes testimony.

21 I'll allow the judge to address that.

22 MR. RICCELLI: I'm willing to let the  
23 judge, who has heard the testimony, to  
24 determine whether it does or not.

25 THE ARBITRATOR: Is there a particular in

1 the hypothetical, or the --

2 MR. SALTER: Yes. The hypothetical does  
3 not account for the reimbursement for the costs  
4 put into the distribution line.

5 The implication in the hypothetical is that  
6 everything after the deduction of the 40-some  
7 thousand, the 11,000, is profit. And that was not  
8 the testimony.

9 The testimony was, in addition there, there's  
10 a portion that's gone to the cost of installing  
11 the distribution line. So I think that's an  
12 important component that's out of the  
13 hypothetical.

14 BY MR. RICCELLI:

15 Q. I think I clearly stated that the \$67- to \$70,000 was  
16 accounted for, and that the remainder --

17 We're talking about \$67- to \$70,000 in cost of  
18 construction of the line; approximately \$11,000 a year  
19 in what Cascade believes is the allocable portion of  
20 its cost in reserving gas generally to serve its  
21 customers; and that we're talking about purchasing gas  
22 and storing it or having it available to them; and  
23 approximately \$40- to \$43,000 a year which they say  
24 upon receipt they would allocate by requirement or  
25 rule of Commission, they would allocate to relieve

1 fixed costs to Schedule 511 ratepayers.

2 I guess my question is, is there any guarantee by  
3 schedule or rule of the Commission that they would be  
4 required to do that?

5 A. I've already answered the fact that to the extent that  
6 the revenues that they are collecting, or the  
7 portion -- and this is identified in this tariff --  
8 the portion of the revenue that's being collected that  
9 is for that capacity -- in other words, bringing the  
10 gas to Moses Lake -- that would go in the  
11 interest-bearing account that I heard you referring  
12 to, and that would be refunded by a formula to various  
13 class of customers, in a fashion.

14 Q. You're talking about just the capacity?

15 A. That would also apply to the commodity costs that were  
16 incurred.

17 Q. Is that an allocable portion of capacity, or is that a  
18 requirement that they incur new capacity costs?

19 A. The rate, as you pay a rate, it is in the tariff. It  
20 includes, remember, the three pieces. And to the  
21 extent that you pay the rate and rates, the collection  
22 of that revenue is compared to the cost that is  
23 actually incurred.

24 So in other words you add up all the customers  
25 and you look at the revenues they actually paid, and

1 the number of therms times the cost -- the portion of  
2 the rate that was intended to cover that cost, and you  
3 compare that to the actual cost.

4 And that -- the difference between those two  
5 numbers is carried in an interest-bearing account.

6 And it could be that the company over- or  
7 undercollected during any one period of time, and the  
8 company then paid an interest rate or received an  
9 interest rate on that balance.

10 And once a year or two years, depending on, you  
11 know, what those balances are doing, the company files  
12 a new purchase gas adjustment and deferral  
13 amortization filing, and the rates are adjusted.

14 And, again, these things are always paying  
15 interest, so the company would pay back or recollect  
16 under or overcollections of those two peaces of those  
17 total rates.

18 Q. I'm still a bit confused. Is that incremental  
19 out-of-pocket costs we're talking about?

20 Or is that just total cost, whether it's  
21 incremental or out-of-pocket?

22 A. Total gas costs.

23 Q. Are you talking about the cost of gas and the cost of  
24 transportation of the gas?

25 A. Right. Both of those in total.



1           If you look at the revenues as a sign in today's  
2           current tariff, and I'm looking at today's tariff, 30  
3           cents out of every therm is treated as collection of  
4           those two items.

5           And that 30 cents is compared to the actual costs  
6           when you accumulate the 30-cent amounts, that  
7           accumulation is compared to the actual costs that the  
8           company incurs.

9       Q.    Okay. In this particular case -- I guess I'm not  
10           quite communicating clearly here -- if the company  
11           collects a certain amount with respect to this  
12           contract, is there any guarantee that, as a result of  
13           this particular contract, contributions will be made  
14           to that account or not as opposed to their general  
15           operations over time, the result of their general  
16           operations over time?

17       A.   Well, to the extent that this contract collects  
18           revenues associated with either the capacity or  
19           commodity of gas, and on this bill deficiency thing it  
20           would only be the capacity portion.

21           But to the extent they collect actual sales,  
22           those dollars are going to be added to the revenue  
23           collected, and that would then be compared to the  
24           actual costs that the company incurred during that  
25           same time period.

1 I think you may be asking the question, did the  
2 company actually incur additional costs because they  
3 had the contract with your client.

4 Q. Yes, that's my basis.

5 A. And, obviously, if there was a commodity piece -- in  
6 other words, if your client used commodity and was  
7 billed for that commodity, yes, in fact there would be  
8 specific costs related to that client.

9 The contract -- I mean the tariff, sorry. I said  
10 "contract"; I meant "tariff" -- the tariff requires  
11 that the company have the capacity available to serve  
12 customers under 511 or they don't sign them up under  
13 511.

14 MR. GOLTZ: This is Jeff Goltz.

15 Mr. Lott was referring to the current tariff,  
16 but he then just corrected me, and it's in both.

17 A. Right. The term says, with which this schedule is  
18 part of, provided adequate capacity exists in the  
19 company system. The company has to have the capacity.

20 Now, they may purchase that capacity the day  
21 before they serve this customer, or they may come up  
22 with a plan on how they're going to serve that  
23 capacity, or they may have already had it for the last  
24 five years, I don't know.

25 Related to this particular contract, the answer

1 is, I don't know.

2 BY MR. RICCELLI:

3 Q. So you don't know how this particular contract would  
4 affect their accounting in particular?

5 A. I don't know whether the company had to go out and  
6 find capacity so that they could serve this particular  
7 client.

8 Q. So in other words, they would have to actually go out  
9 and -- you're talking about pipeline capacity?

10 A. Yeah, I don't know whether they had to or didn't.

11 Q. Assume that they did not have to purchase any new  
12 pipeline capacity to serve this client.

13 Then can you state with any certainty as to how  
14 they would [sic] account for the remainder of the  
15 costs?

16 THE ARBITRATOR: How they should, or how  
17 they would?

18 BY MR. RICCELLI:

19 Q. How they should.

20 A. -- they would account in different terms.

21 They would account for it by putting the -- they  
22 would just book the capacity charges on their books,  
23 and they collect the revenue from the customer, and  
24 they put that into the same account, you know, on the  
25 company's books.

1           And the net of those two is this interest-bearing  
2           account. And if that's what you're referring to,  
3           that's how they specifically count for it on their  
4           books.

5           When Mr. Parvinen reviews these, that's what he  
6           will see. He will see actual gas cost and he will see  
7           revenues collected to cover those actual gas costs.

8    Q.    Do you recall the circumstances yesterday during our  
9           discussion in which you said there was no way to  
10          guarantee that something wouldn't be booked as profit  
11          as opposed to covering fixed costs, and that the rates  
12          are adjusted based upon prospective costs?

13          You know, that the rate adjustments made by the  
14          Commission are based on prospective costs and doesn't  
15          consider profitability in the past.

16          Do you remember that discussion?

17    A.    I remember that, I don't remember the exact words  
18          you're saying. I remember talking about that, whether  
19          it was yesterday afternoon when the five of us were on  
20          the phone, or whether it was me and you talking  
21          earlier in the day, I'm not sure.

22    Q.    Can you try to give a basic context of what you recall  
23          the basis for that discussion, the conclusion that you  
24          couldn't tell whether something would go to profit or  
25          not?

1 A. First of all, I don't know -- obviously, when the  
2 company signs a new customer up, and is already  
3 incurring costs that would help provide that customer  
4 service.

5 So let's say they already had substantial  
6 capacity in the Moses Lake area, didn't need any new  
7 capacity. Maybe they had lost some other industrial  
8 customer for whatever reason, or maybe they had  
9 purchased too much in the past.

10 When they sign this new customer up, and if they  
11 are incurring no new incremental costs on that day,  
12 obviously that new customer when they pay the  
13 revenues, may result in either increasing the current  
14 profits that the company's making, or decrease the  
15 loss to the company.

16 But this would not refer to the capacity revenue  
17 that the company would be incurring for that customer.  
18 It would only be related to the company's own system  
19 because, remember, the capacity revenues are put into  
20 that interest-bearing account. And therefore where  
21 they may show a short-term overcollection because of  
22 this, it would be turned around and refunded to the  
23 customers in general soon afterwards.

24 But if the company had incurred no other new  
25 costs or substantial new costs, then yes, that could

1 increase the company's profit or reduce their losses  
2 that they were incurring prior to signing that new  
3 customer.

4 Q. And it's nothing that rate-making deals with, is it?

5 A. Rate-making does deal with that. Whenever a company  
6 needs a new general rate case or needs a rate  
7 increase, we review all the costs of the company.

8 Or if we saw a company over-earning by a  
9 substantial amount, we could file a complaint against  
10 their rates and go after the rates that they're  
11 charging.

12 Q. But what I'm saying is that the rate-making doesn't  
13 deal with a particular individual case; right?

14 A. They don't deal with the individual -- generally, they  
15 do not deal with individual customers.

16 And whether there's over or under collection,  
17 that does not refer again to the gas costs because the  
18 gas costs, especially for industrial customers, they  
19 have been directly assigned in certain cases to  
20 specific customers as opposed to just general class.

21 I am not sure whether Cascade has done that, but  
22 I know other companies have.

23 Q. If I understand what you're stating, then, is that if  
24 you assume that they spent \$60- or \$70,000 in actual  
25 out-of-pocket costs for installation of the gas line,

1 there's nothing that would guarantee that the  
2 remainder collected wouldn't all go to profit, if  
3 there were no other additional costs, other than any  
4 capacity costs or anything like that?

5 A. Right. Every time they make additional sales.

6 And every time they set up a new customer and  
7 that new customer provides them more marginal revenues  
8 than the incremental costs of serving that new  
9 customer, that would add to their profit until they  
10 had to step up one of their other expenses.

11 Generally, expenses are variable, or direct and  
12 indirect. And indirect expenses do not directly  
13 follow the increase in the number of customers. They  
14 do tend to grow, but they grow in slower, at a more  
15 blockish or stepped style.

16 So just because you sign up a new customer, they  
17 don't have to add a new accountant and a new attorney  
18 and a new president, nor do they increase their  
19 salaries just because of that.

20 MR. RICCELLI: Thank you. I have no more  
21 questions.

22 THE ARBITRATOR: Mr. Salter, do you have  
23 questions?

24 MR. SALTER: Let me take a moment, Your  
25 Honor.

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## CROSS-EXAMINATION

BY MR. SALTER:

Q. Just one question I have. When did you -- do you recall when you first had conversations with Mr. Riccelli about his client's dispute with Cascade?

A. I remember more the conversation than I do the exact time frame. But someplace back towards the beginning of the year. I don't think I was the first person on staff contacted.

MR. SALTER: That's all I have, thank you.

THE ARBITRATOR: Thank you. You are excused.

(The witness was excused.)

THE ARBITRATOR: Thank you for your cooperation, all three of you, or maybe there are more.

THE WITNESS: Just three.

THE ARBITRATOR: Mr. Goltz, thank you.  
And Mr. Parvinen, thank you.

MR. GOLTZ: Our pleasure. You're welcome.

MR. SALTER: Thank you.

MR. GOLTZ: Good afternoon.

(Telephonic testimony was concluded  
at 3:53 p.m.)

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